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STARKE et al. v. BERRY'S EX'RS et al.

March 16, 1916.

[88 S. E. 69.]

1. Wills (§ 573(2)*)—Construction—Interest Bequeathed.—Testator, who had conducted a very profitable clothing business and had given two of his principal employees a percentage of the net profits, computed the net profits by first deducting from the profits 6 per cent. interest on the capital invested. By will he provided for sale of the business to such employees and for the loaning of money to enable them to make the purchase, providing also that as they had conducted the business during his illness they should receive 50 per cent. of the net profits at the end of that fiscal year after figuring in everything in the usual way. Held, that such employees were not entitled to one-half of the net profits without any deduction of interest on the capital actually invested, but, the purpose of construing a will being to give effect to the intent of the testator, the term "net profits" should be accepted as meaning the same net profits in which they had shared during the testator's and the interest should be deducted.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1249; Dec. Dig. § 573 (2)* 13 Va.-W. Va. Enc. Dig. 796.]

2. Wills (§ 781*)—Construction—Interest Devised.—In such case, the employees having received the 50 per cent. of the net profits are not entitled to the percentage of net profits which they could claim under their contracts, the provision in the will obviously supplanting such contracts, and it not being contemplated that there should first be a deduction of the percentage to which the employees were entitled by contract and then an equal division of the remainder, this being particularly true as the employees did not assert such claim until the executors of the estate demanded that deductions of interest on invested capital be made in computing the profits.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 2013-2017; Dec. Dig. § 781.* 13 Va.-W. Va. Enc. Dig. 796.]

Appeal from Chancery Court of Richmond.

Bill by Celeste Berry and another, executors and trustees under the will of Oscar H. Berry, deceased, against Thomas H. Starke and another. From the decree, defendants appeal. Affirmed.

Leake & Buford and *Meredith & Cocke*, all of Richmond, for appellants.

Julian Gunn and *Coke & Pickrell*, all of Richmond, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.